

we cannot afford that. I hope someone will come to the floor next week or the week after on the other side and say we cannot afford \$87 billion for Iraq, then, either. If we cannot afford \$292 million for our Native-American population, who are experiencing life or limb tests, then I sure hope we will not hear the argument on the other side that somehow we can afford providing health care dollars to the Iraqi children. I bet that is exactly what we are going to hear—\$87 billion worth of requests. It is a double standard.

I yield the floor.

Mr. BURNS. The pending amendment No. 1734, offered by the Senator from South Dakota, increases discretionary spending in excess of the 302(b) allocation to the Subcommittee on Interior of the Appropriations Committee. Therefore, I raise a point of order against the amendment pursuant to section 302 of the Budget Act.

Mr. DASCHLE. I move to waive the relevant portions of the balanced budget amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 49, nays 45, as follows:

[Rollcall Vote No. 356 Leg.]

#### YEAS—49

Akaka	Dayton	Lincoln
Baucus	Dodd	McCain
Bayh	Dorgan	Murkowski
Biden	Durbin	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Campbell	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Coleman	Kohl	Stabenow
Collins	Landrieu	Stevens
Conrad	Lautenberg	Wyden
Corzine	Leahy	
Daschle	Levin	

#### NAYS—45

Alexander	Cochran	Frist
Allard	Cornyn	Graham (SC)
Allen	Craig	Grassley
Bennett	Crapo	Gregg
Bond	DeWine	Hagel
Brownback	Dole	Hatch
Bunning	Domenici	Hutchison
Burns	Ensign	Inhofe
Chafee	Enzi	Kyl
Chambliss	Fitzgerald	Lott

Lugar	Sessions	Sununu
McConnell	Shelby	Talent
Nickles	Smith	Thomas
Roberts	Snowe	Voinovich
Santorum	Specter	Warner

#### NOT VOTING—6

Edwards	Kerry	Mikulski
Graham (FL)	Lieberman	Miller

The PRESIDING OFFICER. On this vote, the yeas are 49 and the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

#### ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session and immediately vote on the confirmation of Executive Calendar No. 357, the nomination of Kim R. Gibson to be U.S. District Judge for the Western District of Pennsylvania, with no intervening action or debate; further, that there be 2 minutes equally divided in the usual form prior to the vote; further, that following the vote, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, the Senate then return to legislative session, and Senator KENNEDY be recognized for up to 10 minutes in morning business, to be followed by Senator FEINGOLD for up to 8 minutes, to be followed by the majority leader, or his designee, for up to 10 minutes, and the Senate then stand in recess under the previous order.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, the two managers of the bill are contemplating, at 2:15, when we come back, the Senator from California taking up her amendment. She has requested 20 minutes. Then it is my understanding the managers of the bill, in conjunction with the leaders, are going to try to set a series of votes after the debate on the Boxer amendment is completed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL. I thank the Chair.

#### EXECUTIVE SESSION

#### NOMINATION OF KIM R. GIBSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The Senate will proceed to executive session, and the clerk will report the nomination.

The legislative clerk read the nomination of Kim R. Gibson, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield my time to the Senator from Pennsylvania, Mr. SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania, Mr. SPECTER, is recognized.

Mr. SPECTER. Mr. President, I am sure my colleagues want to hear about the outstanding qualifications of this judicial nominee so they will be prepared to vote yea or nay.

The Senate is about to vote on the nomination of Common Pleas Judge Kim Gibson for the U.S. District Court for the Western District of Pennsylvania. Judge Gibson now serves on the State court, where he has been a distinguished jurist since 1998. He has gone through the bipartisan, non-partisan nominating panel that Senator SANTORUM and I have set up. He is a graduate of the U.S. Military Academy in 1974. He has a law degree from Dickinson Law School, magna cum laude, 1975. He served with the defenders office helping the indigent. He has had a distinguished practice and now is on the Common Pleas bench in Somerset County, PA. He is well grounded academically, well grounded professionally, and I recommend to my colleagues that he will make an outstanding Federal judge.

I now yield to Senator SANTORUM.

Mr. SANTORUM. Mr. President, I associate myself with the remarks of the senior Senator from Pennsylvania. I thank my colleagues for allowing the vote to go forward on this very distinguished individual.

Mr. LEAHY. Mr. President, today we vote to confirm another district court nominee, to the Western District of Pennsylvania. This nominee, Mr. Kim Gibson, is currently a judge on the Court of Common Pleas in Somerset County, in Western Pennsylvania. Judge Gibson is a graduate of West Point Military Academy and graduated second in his class from Dickinson School of Law in Carlisle, PA. Over the course of his career he has served in the Army's Judge Advocate General Corps and the public defender service. Not surprisingly, the ABA gave this nominee its highest rating—unanimous "well qualified."

With today's confirmation, the Senate has now confirmed 154 judicial nominees for this President. As I noted this week, the current pace of confirmation stands in stark contrast to what occurred with judicial nominees during the Clinton administration. It was not until well into the fourth year of President Clinton's second term when Republicans controlled the Senate, before this many judicial nominees were confirmed. It took President Reagan, during his first term, almost to the end of his fourth year to get this many judicial nominees confirmed, and that was with a Senate that was controlled by the same party. It also took President George H.W. Bush well into his fourth year to get this many of his judicial nominees confirmed.

In contrast, today, with the shifts in Senate control, it has effectively taken

a little more than 2 years of rapid Senate action to confirm 154 judicial nominees for this President, including 100 during Democratic control. This year alone the Senate has confirmed 54 judicial nominees, including 11 circuit court nominees in 2003. That is more confirmations in just nine months than Republicans allowed for President Clinton in 1996, 1995, 1999, or 2000. Overall, we have confirmed 28 circuit court nominees of President Bush since July of 2001, which is more than were confirmed at this time in the third year of President Reagan's first term President George H.W. Bush's term, or either of President Clinton's terms.

The Senate has held hearings for 13 Pennsylvania nominees of President Bush's to the Federal courts in Pennsylvania. While I was chairman, the Senate held hearings for and confirmed 10 nominees to the district courts in Pennsylvania, plus Judge D. Brooks Smith to the Third Circuit Court of Appeals.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated far better than President Clinton's. Today, there is no State in the union that has had more Federal judicial nominees confirmed by this Senate than Pennsylvania.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House, particularly regarding nominees in the western half of the State.

Just a few months ago, on May 16, 2003, Jon Delano wrote in the Pittsburgh Business Times, an article titled "Despite Bush Protests, Court Vacancies are Down," about how this President's nominees in the western part of Pennsylvania have been treated more fairly than President Clinton's nominees. He wrote:

Take the Western District of Pennsylvania, for example. During the years of the Santorum filibuster, that court of 10 judges had as many as five vacancies. Today, the Senate has confirmed four Bush appointees—Judges Joy Contie, David Cercone, Terry McVerry, and Art Schwab—and the fifth nomination, attorney Tom Hardiman, has just been sent to the Senate.

With the elevation and confirmation of Judge Brooks Smith to the U.S. Court of Appeals, the president still needs to name one more judge to the local court, but once completed, Mr. Bush, with less than three years in office, will have named—and the Senate will have confirmed—six of the 10 judges on the local federal court. That hardly sounds like obstructionism.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were nine nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole, John Binger, Robert Freedberg, Lynett Norton, Legrome Davis, David Fineman, Harry Litman, Stephen Lieberman, and Robert Cindrich to the

Third Circuit. Despite how well-qualified these nominees were, many of their nominations sat pending before the Senate for more than a year without being considered.

The record of this nominee stands in contrast to the record of many of this President's judicial nominees, particularly for circuit positions. Judge Gibson received a unanimous "well qualified" rating from the American Bar Association and has enjoyed a tremendous career as both a litigator and a judge. Far too many of this President's judicial nominees have limited legal experience and no judicial experience but significant partisan experience. In fact, 23 of this President's judicial nominees have earned partial or majority "not qualified" ratings from the ABA. Another nominees to the same court, Tom Hardiman, has significantly less litigation experience, no judicial experience and was given a partial "not qualified" rating by the ABA. It is also interesting to note that their local bar association, the Allegheny County Bar Association, gave the two nominees very different peer-review ratings. Judge Gibson received a rating of "highly recommended" for the district court position. Mr. Hardiman, however, received a rating of "not recommended" by the same local bar association.

Certainly, the citizens of Western Pennsylvania deserve a well qualified judiciary to hear their important legal claims in Federal court. I am pleased to lend my support to Judge Gibson's nomination. He will be the 13th judicial nominee of this President confirmed to the State of Pennsylvania and the fifth judge confirmed to the Western District of Pennsylvania. I congratulate Judge Gibson and his family.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Kim R. Gibson, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER (Mr. SESSIONS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 357 Ex.]

YEAS—94

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Murkowski
Bayh	Durbin	Murray
Bennett	Ensign	Nelson (FL)
Biden	Enzi	Nelson (NE)
Bingaman	Feingold	Nickles
Bond	Feinstein	Pryor
Boxer	Fitzgerald	Reed
Breaux	Frist	Reid
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Rockefeller
Burns	Gregg	Santorum
Byrd	Hagel	Sarbanes
Campbell	Harkin	Schumer
Cantwell	Hatch	Sessions
Carper	Hollings	Shelby
Chafee	Hutchison	Smith
Chambliss	Inhofe	Snowe
Clinton	Inouye	Specter
Cochran	Jeffords	Stabenow
Coleman	Johnson	Stevens
Collins	Kennedy	Sununu
Conrad	Kohl	Talent
Cornyn	Kyl	Thomas
Corzine	Landrieu	Voinovich
Craig	Lautenberg	Warner
Crapo	Leahy	Wyden
Daschle	Levin	
Dayton	Lincoln	

NOT VOTING—8

Edwards	Kerry	Mikulski
Graham (FL)	Lieberman	Miller

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table and the President shall be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

#### UNANIMOUS-CONSENT REQUEST

Mr. REID. Mr. President, Senator KENNEDY is to be recognized for 10 minutes. His remarks will take longer than that. I ask unanimous consent that he be recognized for an additional five minutes and the majority have five minutes in addition to whatever time the majority leader has under his control.

The PRESIDING OFFICER. In my capacity as a Senator, I will object at this time.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 8½ minutes of my 10 minutes.

#### FAILED POLICY IN IRAQ

Mr. KENNEDY. Mr. President, I heard many of my colleagues today discussing my remarks on this administration's go-it-alone policy in Iraq. This administration and my colleagues across the aisle are trying to deflect attention away from the administration's failed policy in Iraq. For the sake of our troops, it is time for this administration to speak honestly about its failures in Iraq. Many Americans share my views, and I regret that the President considers them uncivil and not in the national interest. The